

Remarks

In view of the above amendments and the following remarks, reconsideration of the outstanding office action is respectfully requested.

The objection to the abstract of the disclosure is overcome by the above amendments, and should therefore be withdrawn.

The objection to claim 2 is overcome by the above amendments, and should therefore be withdrawn.

The rejection of claims 1, 8, 9, and 11 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 6,346,193 to Bauer (“Bauer”) is respectfully traversed. Bauer teaches a boom system and its use at an inlet of a reservoir. The U.S. Patent and Trademark Office (“PTO”) has taken the position that the hood and curtain portions of the boom are two “curtain portions” as recited in the claim language. This is an improper interpretation of the teachings of Bauer. Though the hood and curtain portions can be formed of the same material, they are structurally and functionally distinct. The curtain portion is intended to allow the flow of water therethrough and, thus, acts as a filter. The hood portion is intended to be filled with flotation billets to maintain the position of the boom on the water surface. For this reason, the hood portion does not form a curtain portion as recited in claim 1.

The PTO has also asserted that Bauer teaches first and second support systems, citing to several anchoring systems. This, too, is an improper interpretation of Bauer, which recites only a single support system (i.e., the hood portion filled with flotation billets). Contrary to the PTO’s assertion, the anchoring systems are not support systems as recited in claim 1.

Because Bauer fails to teach or suggest either of these claim elements, the rejection of claims 1, 8, 9, and 11 as anticipated by Bauer is improper and should be withdrawn.

Claims 1-3, 6, 8, 9, 12 and 13 are rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,485,229 to Gunderson, III et al. (“Gunderson”). Gunderson teaches a boom that contains a support system, curtain, anchoring system, and gas injection system, as well as various uses of such booms. The PTO has taken the position that the embodiment shown in Figure 19 shows two “curtain portions” (i.e., a hood portion and a curtain portion). This is an improper interpretation of Gunderson. For substantially the same

reasons noted above with respect to Bauer, it is improper to consider the hood portion as a curtain portion within the meaning of the claim language.

The PTO has also asserted that Gunderson teaches first and second support systems, citing to the flotation billets as one and the anchoring system as another. This, too, is an improper interpretation of Gunderson, which recites only a single support system. An anchoring system does not constitute a support system as recited in claim 1.

Because Gunderson fails to teach or suggest either of these claim elements, the rejection of claims 1-3, 6, 8, 9, 12, and 13 as anticipated by Gunderson is improper and should be withdrawn.

The rejection of claim 15 under 35 U.S.C. § 103(a) for obviousness over Bauer is respectfully traversed. Because Bauer is deficient with respect to the above-noted limitations of claim 1 and claim 15 depends from claim 1, applicant submits that Bauer cannot have rendered Claim 15 obvious. For this reason, the rejection of claim 15 is improper and should be withdrawn.

The rejection of claims 15, 16, 17, and 19 under 35 U.S.C. § 103(a) for obviousness over Bauer in view of Gunderson is respectfully traversed. The teachings of Bauer and Gunderson are set forth above. Because both Bauer and Gunderson are similarly deficient with respect to the above-noted limitations of claim 1, the combination of these references is likewise deficient with respect to claim 1. Because claims 15, 16, 17, and 19 depend from claim 1, the rejection of claims 15, 16, 17 and 19 is improper and should therefore be withdrawn.


The rejection of claims 15-20 under 35 U.S.C. § 103(a) for obviousness over Gunderson is respectfully traversed. The teachings of Gunderson are set forth above. Because Gunderson is deficient with respect to the above-noted limitations of claim 1 and claims 15-20 depend from claim 1, the rejection of claims 15-20 is improper and should therefore be withdrawn.

Enclosed herewith for consideration by the PTO is an information disclosure statement and accompanying PTO-1449 form. Applicant respectfully requests the return of a signed and dated PTO-1449 form with the next response from the PTO.

In view of all of the foregoing, applicant submits that the present application is in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

Dated: January 12, 2005



Edwin V. Merkel
Registration No. 40,087

NIXON PEABODY LLP
Clinton Square, P.O. Box 31051
Rochester, New York 14603-1051
Telephone: (585) 263-1128
Facsimile: (585) 263-1600

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

- ☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450
- ☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at _____.

January 12, 2005
Date


Laura L. Trost